

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.58/2011**

% **16th September, 2011**

SH. JAIN DASS JAIN (DECEASED) AND NOW REPRESENTED THROUGH
LEGAL REPRESENTATIVES AND OTHERS Appellants
Through: Mr. Satya Prakash Gupta, Adv.

VERSUS

SMT. SUDHA RANI JAIN AND ANOTHER Respondents
Through: Mr. Rajeshwar Kumar Gupta, Adv.
for the respondent no.1.
Mr. Shyam Dutt, Adv. for the
respondent no.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 18.10.2010 of the Trial Court, and by which judgment the Trial Court dismissed the suit for declaration and perpetual injunction filed on behalf of the appellants/plaintiffs.

2. The facts of the case are that one Sh. Anoop Singh Jain was the owner of the property plot no. 483, khasra No. 740, Municipal No.51, Jangpura Road, Bhogal, New Delhi admeasuring 267 sq. yards (hereinafter 'the suit property/said property'). Sh. Anoop Singh Jain died on 8.4.1972 leaving behind a widow, Smt. Vidya Wati, three sons namely Sh. Bimal Parshad Jain, Sh. Jain Dass Jain and Sh. Dhaninder Kumar Jain, and three daughters namely Smt. Jai Mala, Smt. Vijay Mala & Smt. Vinay Jain. The three daughters and the widow executed a release deed dated 1.6.1972 in favour of the three sons/brothers, i.e. Sh. Bimal Parshad Jain, Sh. Jain Dass Jain and Sh. Dhaninder Kumar Jain. These three persons therefore became owners of $\frac{1}{3}^{\text{rd}}$ share each in the property. Subsequently, the third brother, Sh. Dhaninder Kumar Jain vide a registered release deed dated 31.1.1986, Ex. PW3/1, released his share in favour of other two brothers namely Sh. Bimal Parshad Jain and Sh. Jain Dass Jain and as a result of which, the two brothers, Sh. Bimal Parshad Jain and Sh. Jain Dass Jain became owners of $\frac{1}{3}^{\text{rd}} + \frac{1}{6}^{\text{th}}$, i.e. $\frac{1}{2}^{\text{nd}}$ each share of the property. After the execution of the registered release deed by Sh. Dhaninder Kumar Jain, there remained no right, title and interest with him so that the same could devolve thereafter upon his legal heirs and Sh. Bimal Parshad Jain and Sh. Jain Dass Jain became owners of $\frac{1}{2}^{\text{nd}}$ share each in the suit property.

3. Sh. Dhaninder Kumar Jain died on 22.10.2001 and thereafter his widow, defendant no.1/Smt. Sudha Rani Jain/respondent no.1 executed a sale deed in favour of the defendant no.2/Sh. Rishi Ram Vasisht/respondent no.2 seeking to allegedly transfer the 1/3rd share of Sh. Dhaninder Kumar Jain to the defendant no.2/respondent no.2. This sale deed dated 17.2.2003 was registered with the office of the sub-Registrar. The subject suit therefore came to be filed challenging the action of the defendant no.1/respondent no.1 in executing the sale deed and declaration and perpetual injunction was prayed for in the subject suit and for declaring the plaintiffs who are the legal heirs of the two sons, Sh. Bimal Parshad Jain and Sh. Jain Dass Jain as the owners of the suit property and for injunction restraining the defendants from, in any manner, seeking to dis-possess the plaintiffs or interfere in their peaceful possession of the suit property.

4. The Trial Court after the pleadings were complete framed the following issues:-

“9. On the basis of pleadings of the parties following issues were framed on 7.10.04:

i). Whether the Release Deed dated 31.1.1986 was validly executed in favour of the plaintiffs by late Sh. Dhanender Kumar Jain? OPP.

ii). Whether the plaintiffs are entitled to declaration, as prayed for in the plaint? OPP.

iii). Whether the plaintiffs are entitled to perpetual injunction, as prayed in the plaint? OPP.

iv). Whether the suit of the plaintiffs is not maintainable in view of the preliminary objection taken by the defendants, in their written statement? OPD.

v). Relief.”

5. The Trial Court after holding that the release deed, Ex.PW3/1 was duly proved to be executed by Sh.Dhaninder Kumar Jain who transferred his interest to his other two brothers, Sh.Bimal Parshad Jain and Sh.Jain Dass Jain however, held that actually the document could not transfer title inasmuch as the case of the plaintiffs was that the release deed was executed on payment of consideration of Rs.60,000/-, and therefore, the release deed was not a valid method of transfer of title and the document which ought to have been executed was actually a sale deed. The relevant observations in this regard of the Trial Court are contained in paras 23 to 28 of the impugned judgment and which read as under:-

“23. Polemic question to be answered here is, whether title of share belonging to Sh. Dahaninder Kumar Jain could have been transferred by way of Ex.PW3/1 (release deed). Release deed is not equivalent to sale deed. Difference between such two documents has been explained by Dr.Sir Hari Singh Gour in his commentary on the transfer of property act vol.I (11th edition) as follow:

A sale or a transfer presupposes the existence of the property which is sold or transferred. It presupposed the transfer from one person to another of the right in property. On the other hand, relinquishment means the extinction of a right or the destruction of a property and if the property is destroyed or the right is extinguished, there is nothing left to transfer or to sell.

24. In his opinion, the writer has relied upon a case titled as **Provident Investment Co.Ltd. Vs. Commissioner of Income Tax, Bombay City. AIR 1954 Bombay 95.**

25. It appeared from the statement of PW-1 that the plaintiffs were advised by their counsel to get release deed executed inspite of sale deed to save stamp duty. Public policy requires the stamp duty to be paid on transfer of property from one person to another.

26. **Section 66 of the Registration Act** obliges the registrar on registering any non-testamentary document relating to immovable property to forward a memorandum of such document to each of Sub-Registrars subordinates to himself in whose sub-district any part of such property is situated. The registrar is also required to toward a copy of such document, together with copy of map or plan (if any) mentioned in Section 21, to every other Registrar in whose district any part of such property is situated.

27. Considering all this, in my opinion, the purpose of registration of a document related to immovable property is not only to earn revenue for the state but also to give notice of such transactions to the public at large so that intended purchasers may know that the property has already been transferred.

28. Plaintiffs claim that they had purchased a share of Dhaninder Kumar Jain on the basis of release deed/relinquishment deed but as discussed above said deed was not enough to transfer title from Dhaninder Kumar Jain to the plaintiffs, even if any such document was executed by Late Sh. Dhaninder Kumar Jain. The executants could have relinquished his share but not in favour of some specific person i.e. plaintiffs.”

6. In my opinion, unfortunately, the Trial Court has fallen into a grave error in dismissing the suit of the appellants/plaintiffs, although, the release deed, Ex.PW3/1 was duly proved and exhibited. A title or heading of a document is not decisive of the effect of the same and what has to be seen is the substance of the document. A document which may be titled as a release deed may actually transfer

ownership, however, the same would not mean that the actual document which is executed would cease to be operative because of its defective title, unless it is shown that there is some legal bar which requires the document not to be looked into. The requirement of a sale deed as per Section 54 of the Transfer of Property Act, 1882 is that the transfer of interest in a property should be by means of a registered document. This is also the mandate of Section 17(1)(b) of the Registration Act, 1908. It is not disputed that the document in question being the release deed, Ex.PW3/1 is a registered document and the only issue therefore will be as to what will be the effect of complete stamp duty as required by the law not having been paid. I have already observed above that incorrect title of a document cannot take away the substance of a document, and, in substance, the document being the release deed, Ex. PW3/1 transferred 1/3rd share of property of Sh. Dhaninder Kumar Jain to his other two brothers Sh.Bimal Parshad Jain and Sh.Jain Dass Jain. So far as the issue of stamping is concerned, any objection to the stamping of the document by virtue of Section 36 of the Indian Stamp Act, 1899 has to be taken before the document is led into evidence. In the present case, it is not disputed on behalf of the respondents/defendants that no objection was taken in terms of Section 36 of the Indian Stamp Act, 1899 and the document has been proved and exhibited without any objection as to stamping. Therefore, in my opinion, there cannot even be any

objection as to stamping. Once the document is validly executed, is registered in compliance with the requirement of law with regard to registration, no objection is raised with respect to inadequate stamping of the same, the document being the release deed Ex.PW3/1 thus in fact transferred the title of Sh. Dhaninder Kumar Jain to the two brothers, Sh. Bimal Parshad Jain and Sh. Jain Dass Jain in the suit property. Once Sh.Dhaninder Kumar Jain transferred his 1/3rd ownership interest in the suit property, there was nothing left with him for his widow/defendant no.1/respondent no.1 thereafter to transfer by virtue of the sale deed dated 17.2.2003 in favour of the defendant no.2/respondent no.2. *Nemo dat quod non habet* is the well settled principle of law, i.e. no one can give what he does not have. Defendant no.1 had no right, title or interest in the suit property after the execution of the release deed by her husband and therefore there could not be any transfer of title by means of the sale deed dated 17.2.2003 in favour of the defendant no.2/respondent no.2. I am in fact informed that this sale deed dated 17.2.2003 has not even been filed or exhibited by the defendants/respondents in the Trial Court.

7. Learned counsel for the respondent however sought to argue that once there exists a registered document being the sale deed dated 17.2.2003 in favour of defendant no.2, it was incumbent upon the appellants/plaintiffs to apply for cancellation of the sale deed. In law, there was no requirement for the plaintiffs/appellants to apply

for cancellation of the sale deed which was a void document. Only voidable documents are required to be got cancelled, and void documents are not required to be got cancelled. This is the ratio of the decision of the Supreme Court in the case of ***Prem Singh vs. Birbal, 2006 (5) SCC 353***. Therefore, I reject the argument as raised on behalf of the respondents that there was any legal requirement of getting the sale deed dated 17.2.2003 executed by the respondent no.1/defendant no.1 in favour of the respondent no.2/defendant no.2 cancelled.

8. In view of the above, the appeal is allowed. The impugned judgment and decree is set aside. The plaintiffs are declared to be the complete owners of the suit property being plot no. 483, khasra No. 740, Municipal No.51, Jangpura Road, Bhogal, New Delhi admeasuring 267 sq. yards. The respondents/defendants are restrained from, in any manner, seeking to dispossess or interfere, in any manner, with the possession of the appellants/plaintiffs of the suit property. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

SEPTEMBER 16, 2011
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VALMIKI J. MEHTA, J.